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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MARVIN D. RICHARD,

Petitioner,

2:18-cv-00181-KJD-NJK

vs.

ORDER

JO GENTRY, *et al.*,

Respondents.

_____ /

This action is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Marvin D. Richard, a Nevada prisoner. On January 31, 2018, Richard filed an application to proceed *in forma pauperis* (ECF No. 1), along with his habeas corpus petition (attached to application to proceed *in forma pauperis*, at ECF No. 1-1) and a motion for appointment of counsel (ECF No. 2).

The application to proceed *in forma pauperis* is incomplete; it does not include the proper certification from the institution where Richard is incarcerated. The Court will deny the application to proceed *in forma pauperis*, but will not require Richard to pay the filing fee until after counsel appears for him.

The information provided in the application to proceed *in forma pauperis* is sufficient, however, to show that Richard cannot afford counsel. “Indigent state prisoners applying for habeas corpus relief are not entitled to appointed counsel unless the circumstances of a particular case

1 indicate that appointed counsel is necessary to prevent due process violations.” *Chaney v. Lewis*,
2 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per
3 curiam). The court may, however, appoint counsel at any stage of the proceedings “if the interests of
4 justice so require.” See 18 U.S.C. § 3006A; see also Rule 8(c), Rules Governing § 2254 Cases;
5 *Chaney*, 801 F.2d at 1196. In light of the severity of the crime involved in this case, Richard’s
6 sentence, and the nature of the issues raised regarding Richard’s conviction and sentence, the Court
7 finds that appointment of counsel is in the interests of justice.

8 The Court has reviewed Richard’s petition, pursuant to Rule 4 of the Rules Governing
9 Section 2254 Cases in the United States District Courts, and determines that it merits service upon
10 respondents and a response by respondents. The Court will order the petition in this case served
11 upon respondents, will direct respondents to appear, but will not require any further action on the
12 part of respondents at this time.

13 **IT IS THEREFORE ORDERED** that petitioner’s Application to Proceed *In Forma*
14 *Pauperis* (ECF No. 1) is **DENIED**.

15 **IT IS FURTHER ORDERED** that petitioner’s Motion for Appointment of Counsel (ECF
16 No. 2) is **GRANTED**. The Federal Public Defender for the District of Nevada (FPD) is appointed to
17 represent petitioner. If the FPD is unable to represent the petitioner, due to a conflict of interest or
18 other reason, then alternate counsel will be appointed. In either case, counsel will represent the
19 petitioner in all federal-court proceedings relating to this matter, unless allowed to withdraw.

20 **IT IS FURTHER ORDERED** that the Clerk of the Court shall electronically serve upon the
21 FPD a copy of this order, together with a copy of the petitioner’s petition for writ of habeas corpus
22 (ECF No. 1-1).

23 **IT IS FURTHER ORDERED** that the FPD shall have **30 days** from the date of entry of this
24 order to file a notice of appearance, or to indicate to the Court its inability to represent the petitioner
25 in this case.

1 **IT IS FURTHER ORDERED** that the time for petitioner to pay the filing fee for this action,
2 or file a new application to proceed *in forma pauperis* is extended. The Court will set a new
3 deadline for payment of the filing fee after counsel appear for the petitioner and the respondents.

4 **IT IS FURTHER ORDERED** that the Clerk of the Court shall add Adam Paul Laxalt,
5 Attorney General of the State of Nevada, as counsel for respondents.

6 **IT IS FURTHER ORDERED** that the Clerk of the Court shall electronically serve upon
7 respondents a copy of the petition for writ of habeas corpus (ECF No. 1-1), and a copy of this order.

8 **IT IS FURTHER ORDERED** that respondents shall have **30 days** from the date on which
9 the petition is served upon them to appear in this action. Respondents will not be required to
10 respond to the habeas petition at this time.

11 **IT IS FURTHER ORDERED** that the Court will establish a schedule for further
12 proceedings after counsel appear for the petitioner and the respondents.

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14 Dated this 9 day of February, 2018.

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18 UNITED STATES DISTRICT JUDGE
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